

Remarks

Applicants respectfully request that the Examiner reconsider the present application in view of the foregoing amendments to the claims and the following remarks.

The Office Action is final. Upon entry of the present Amendment, claims 1 and 3-8 are pending in the present application. Claim 2 has been cancelled. Claims 1, 5 and 6 have been amended to further clarify and define the invention. Claims 1, 5 and 6 have been amended so that the water-soluble polysaccharides are limited to those disclosed on page 10, lines 1-11 of the present specification and that the acidic-soluble protein is limited to the acidic-soluble soybean protein having specific solubility disclosed on page 6, line 20, to page 7, line 4. Additionally, support for acidic-soluble soybean protein within claims 1, 5 and 6 can be found on page 7, lines 5-16 of the present specification.

Entry of the amendments is proper under 37 C.F.R. § 1.116, since the amendments place the application in condition for allowance, and do not raise any new issue requiring further search and/or consideration (as the amendments address issues previously discussed throughout prosecution). The amendments are necessary and were not earlier presented, because they are made in response to arguments raised in the final rejection. Entry of the amendments is thus respectfully requested.

Claim Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 1-8 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Applicants respectfully traverse.

Although Applicants disagree, in order to advance prosecution, Applicants have amended claims 1, 5 and 6 as described above. Applicants have limited the water-soluble polysaccharides

and the acidic-soluble protein as indicated above. Therefore, the claims comply with the written description requirement and the rejection has been overcome.

Applicants request reconsideration and withdrawal of the present rejection.

Claim Rejection Under 35 U.S.C. 102(b)

Claims 1-4, 6 and 8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Nakayama *et al.*, U.S. Patent No. 6,287,623 (hereinafter "Nakayama"). As applied to the amended claims, Applicants respectfully traverse the rejection.

Although Applicants disagree, in order to advance prosecution, Applicants have amended claims 1 and 6 as described above.

Additionally, Applicants note that page 7, lines 5-7 of the present specification discloses:

"The acidic-soluble protein may be either of vegetable protein or animal protein, and a hydrolysate thereof may also be used." (emphasis added).

Within this context, Applicants also note that vegetable protein itself is clearly distinguished from its hydrolysate.

As indicated in the above claims, the acidic-soluble protein is limited to an acidic-soluble soybean protein, *i.e.*, vegetable protein itself. In view of the above description, Applicants submit that it is clear that the acidic-soluble soybean protein referred to herein is **not** a hydrolysate thereof.

On the other hand, the soybean protein disclosed within the Nakayama references is a hydrolysate.

Thus, the claimed invention is clearly distinguished from Nakayama.

Therefore, the Nakayama reference does not teach each and every feature of claims 1 and 6. See MPEP § 2131 - to anticipate a claim, the reference must teach every element of the claim.

Accordingly, claims 1 and 6 are not anticipated by the Nakayama reference. Since claims 3 and 4 depend from claim 1, and claim 8 depends from claim 6, claims 3, 4 and 8 are also not anticipated by Nakayama.

Applicants respectfully request reconsideration and withdrawal of the above rejection.

Claim Rejection Under 35 U.S.C. § 103(a)

Claims 5 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakayama.

Applicants respectfully traverse the rejection.

The Examiners Position:

The Examiner's asserts that Nakayama discloses all of the limitations within claim 5. Further, the Examiner asserts that Nakayama discloses a hydrolyzed soybean protein material (*i.e.*, acid-soluble protein) comprising water-soluble polysaccharide derived from soybean seed (*i.e.*, acidic watersoluble polysaccharide). The Examiner additionally asserts that although the reference does not disclose that the soybean material is a powder, it is well known that soybean protein and water-soluble polysaccharides are commercially available in powdered form.

Therefore the Examiner concludes that it would have been obvious to one of ordinary skill in the art to have used any commercially available form of hydrolyzed soybean protein and water-soluble polysaccharide derived from protein (including powder) to arrive at the current invention. Applicants respectfully disagree.

Based on the following, Applicants contend that the Examiner's position is untenable.

Applicants' Position:

The Present Invention

The present invention, as it relates to claim 5, is directed to a powder material comprising one or more of salts or saccharides selected from the group consisting of water-soluble soybean polysaccharides, gum arabic, gum tragacanth, locust bean gum, guar gum, glucomannan, psyllium seed gum, tamarind seed gum, tara gum, alginic acid, carrageenan, agar, fucellaran, pectin, curdlan, xanthan gum, gellan gum, pullulan, polydextrose, slightly-digestible dextrin, guar gum degradation products, psyllium seed coat, low-molecular weight sodium alginate, inulin, and modified food starch, water-soluble basic salts, alkali metal salts of organic acids, basic monosaccharides and basic oligosaccharides; and acidic-soluble soybean protein having solubility of 55% or higher at the pH of the acidic food or drink.

Differences between the Invention and the Nakayama Reference

The Examiner acknowledges that Nakayama does not disclose that the hydrolyzed soybean protein and water-soluble polysaccharide derived from soybean within the reference are powdered material.

Additionally, as noted on page 7, lines 10-12 of the present specification, acidic-soluble soybean protein has stronger astringency than does whey protein such as whey protein concentrate and whey protein isolate.

Applicants also note that on page 4, lines 12-14 of the present specification this astringency is an unpleasant feeling that arises when the protein is mixed with saliva, which causes flocculation to occur in the mouth.

With the above in mind, the soybean protein hydrolysate within the Nakayama reference is a low molecular weight material, wherein such flocculation does not take place even when it is

mixed with saliva. Therefore, Applicants submit that based on the teachings in Nakayama, astringency problems were not present within the Nakayama reference, and therefore not envisioned by Nakayama as a problem to be solved.

Therefore, in view of the above, Nakayama does not teach or suggest the relief of astringency, much less the relief of astringency by combining the specific water-soluble polysaccharides, *etc.*, since astringency issues, such as flocculation, do not take place with the protein hydrolysate that is taught in Nakayama.

For the foregoing reasons, Applicants contend that based on the Nakayama reference, the presently claim invention is unobvious to one of ordinary skill in the art since Nakayama does not teach or suggest the relief of astringency, much less the relief of astringency by combining the specific water-soluble polysaccharides. Thus, one of ordinary skill in the art would not envision such astringency issues based on the teaching in Nakayama, therefore making the presently claimed composition have an unexpected effect, (*i.e.*, relief of astringency through the combination of specific water-soluble polysaccharides and acidic-soluble soybean protein having solubility of 55% or higher at the pH of the acidic food or drink) not realized in the Nakayama reference. Further, in cases where the acidic food or drink is a cloudy-type fruit juice beverage, the presently claimed invention results in an unexpected effect of preventing the formation of dregs.

Therefore based on the above, the Examiner's assertions are incorrect, making the Examiner's conclusion untenable.

Accordingly, in light of the above comments, claims 5 and 7 would not be obvious over the Nakayama reference.

Applicants respectfully request reconsideration and subsequent withdrawal of the above rejection.

Conclusion


Applicants respectfully submit that all of the rejections raised by the Examiner have been overcome, and that the present application now stands in condition for allowance.

Should there be any outstanding matters that need to be resolved, the Examiner is respectfully requested to contact Paul D. Pyla at the telephone number below, in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized to charge payment or credit any overpayment to Deposit Account No. 23-0975 for any additional fees required under 37 C.F.R. §§1.16 or 1.17.

Respectfully submitted,

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